

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 01-00078 DAE
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GARY WAYNE RODRIGUES, (01)	)	
ROBIN HAUNANI RODRIGUES	)	
SABATINI, (02)	)	
	)	
Defendants.	)	
_____	)	

ORDER GRANTING DEFENDANT'S  
MOTION TO VACATE ORDER DENYING RESENTENCING

Pursuant to Local Rule 7.2(d), the Court finds this matter suitable for disposition without a hearing. On October 1, 2007, Defendants filed a Motion to Vacate Order Denying Resentencing. After carefully reviewing Defendants' motion and the supporting memoranda, the Court agrees that under current Ninth Circuit law, the views of counsel should be obtained in writing before making the decision of whether or not to resentence. United States v. Fifield, 485 F.3d 1053,

1055 (9th Cir. 2007) (“failure to seek the views of counsel before making the decision of whether or not to resentence violates Ameline and constitutes reversible error.”). “Such written submissions can bring to the sentencing court's attention factors which previously may have been thought to be unimportant under a mandatory guidelines sentencing regime, but that may provide a basis for resentencing. Obtaining input from counsel also facilitates appellate review of the sentence for reasonableness by encouraging the district court to frame its analysis in terms of the factors under 18 U.S.C. § 3553(a).” Id. (citation omitted).

In light of this, this Court HEREBY VACATES its Order Affirming Sentences, filed September 28, 2007. This Court also HEREBY VACATES the hearing to set a mittimus date, currently scheduled for October 5, 2007. Both parties shall have the opportunity to address this Court in writing regarding “whether non-Guidelines factors might have justified a sentence different from the one imposed if, at the time of sentencing, the court’s discretion had not been constrained by the mandatory Guidelines.” United States v. Montgomery, 462 F.3d 1067, 1070-71 (9th Cir. 2006). Both parties may simultaneously submit a

brief regarding their views on or before October 15, 2007. This Court will carefully consider the submissions of counsel with an open mind.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, October 2, 2007.



  
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David Alan Ezra  
United States District Judge

United States of America vs. Gary W. Rodrigues, et al., Cr. No. 01-00078 DAE;  
**ORDER GRANTING DEFENDANTS' MOTION TO VACATE ORDER  
DENYING RESENTENCING**